

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
North American Broadcasting Company, Inc.)	File No. EB-02-SD-197
Licensee of AM station KFNX)	NAL/Acct. No. 200232940007
Cave Creek, Arizona)	FRN: 0007-2982-68
2001 N. 3 rd Street, Suite 102)	
Phoenix, AZ 85004)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 30, 2002

By the Enforcement Bureau: San Diego Office

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find the North American Broadcasting Company, Inc.,¹ licensee of radio station KFNX(AM) Cave Creek, Arizona, has apparently willfully violated Section 73.1560(a)(1) of the Federal Communications Commission's ("FCC") Rules and Regulations ("Rules")² by failing to reduce transmitter output power in accordance with their station authorization. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that North American Broadcasting Company, Inc., is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. Station KFNX is authorized to operate on frequency 1100 kHz with a daytime operating power of 50 kW and a nighttime operating power of 1 kW. The station is required to maintain a directional broadcast pattern, with the shape of the broadcast pattern identical for both

¹ On August 13, 2002, the Commission granted the application of North American Broadcasting Company, Inc., to assign the license for station KFNX to North American Broadcasting Company, Inc., Debtor in Possession.

According to the assignment application, BAL-20020725AAL, no change in ownership occurred, only a change in status of the company. The filing of bankruptcy does not preclude the Commission from issuing an order imposing a forfeiture for violating the Rules. See *Coleman Enterprises, Inc.*, 16 FCC Rcd 24385, 24389 n. 28 (2000); *Friendship Cable of Texas, Inc.*, Forfeiture Order, DA 02-1086 (May 13, 2002, Enf. Bur.).

² 47 C.F.R. § 73.1560(a).

³ 47 U.S.C. §503(b).

daytime and nighttime operations. As specified in the station authorization, KFNX must reduce operating power to 1 kW at local sunset (7:45 p.m. MST for the month of June) and may resume an operating power of 50 kW at local sunrise (5:15 a.m. MST for the month of June).

3. On June 22, 2002 from approximately 6:45 p.m. MST until 10:30 p.m. MST, and on June 23, 2002 in the mid-morning and in the evening from approximately 7:30 p.m. MST until 10:30 p.m. MST, Agents from the San Diego District Office conducted AM broadcast field strength measurements of KFNX at various locations in the Phoenix, Arizona area. The measured field strength at a distance of 50 kilometers from the Cave Creek, Arizona transmitter site was consistent with what would be expected for a 50 kW AM broadcast station on 1100 kHz. The Agents found that several hours beyond local sunset time of 7:45 p.m. MST on the evenings of June 22 and June 23, 2002, the field strength level of station KFNX never changed from its daytime measurement. Radio station KFNX was apparently exceeding its authorized nighttime power level of 1 kW and continued to operate at night with a power level of 50 kW.

4. On the morning on June 24, 2002, the Agents visited the studio of radio station KFNX at 2001 N. 3rd Street, Suite 102, Phoenix, Arizona to discuss the station's failure to reduce operating power at night as required by the terms of the station's authorization. Tests of the transmitter control circuits were conducted. The station was operating at its authorized daytime power of 50 kW. Station personnel could readily change the operating power from daytime to nighttime and back. The station did not employ any device to automatically change operating power at nighttime and relied upon the station's duty operator to make the necessary adjustments at the proper times (local sunset and sunrise). The station did not employ any procedures to remind duty operators about when to make the necessary power changes or to document when those changes occurred in a log or check sheet.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴

6. A broadcast station licensee is responsible for assuring that at all times the station operates within tolerance specified by applicable technical rules contained in this part and in accordance with the terms of the station authorization.⁵ Section 73.1560(a) of the Rules states that "[t]he antenna input power of an AM station as determined by the procedures specified in Section 73.51 of the Rules must be maintained as near as is practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power . . . whenever the transmitter of an AM station cannot be placed into the specified operating mode at

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 73.1350 and 74.1400.

the time required, transmissions must be immediately terminated" In this case, North American Broadcasting Company, Inc., operated station KFNX at fifty times its authorized power level at nighttime (50 kW versus 1 kW).

7. Based on the evidence before us, we find that North American Broadcasting Company, Inc, willfully violated Section 73.1560(a) of the Rules, by exceeding authorized nighttime power levels and failing to maintain operating power at the level and within the tolerances specified in its station authorization and by the Rules. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁶ the base forfeiture amount for exceeding power limits is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amount. Therefore, a forfeiture in the amount of \$4,000 is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, North American Broadcasting Company, Inc., is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for violating Section 73.1560(a) of the Rules.⁸

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, North American Broadcasting Company, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) referenced above and also must note NAL/Account No. 200232940007.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, DC 20554 and MUST INCLUDE THE NAL/Acct. No. 200232940007.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1560(a).

recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

14. IT IS FURTHER ORDERED THAT the licensee, North American Broadcasting Company, Inc., must demonstrate that they are now operating in compliance with daytime and nighttime operating parameters. The licensee shall maintain as part of their station records, power measurements made at three hour intervals.¹⁰ These logs shall be made by the station's duty operator and reviewed daily by the station's chief operator. The logs shall contain the signature of the person making the measurement, the date and local time, the measurement values made in watts and notations of any discrepancies found or corrections made. The chief operator shall sign and date the logs after his or her review. The logs shall be maintained until the licensee demonstrates to the FCC's Enforcement Bureau District Office satisfaction that the licensee is in compliance. The log of the previous month's measurements shall be forwarded by the 5th day of the new month to the FCC office at the following address:

FCC San Diego
4542 Ruffner St., Suite 370
San Diego, California 92111

15. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by certified mail, return receipt requested, to North American Broadcasting Company, Inc., 2001 N. 3rd Street, Suite 102, Phoenix, AZ 85004.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director - San Diego Office

⁹ 47 C.F.R. § 1.1914.

¹⁰ Pursuant to 47 C.F.R. §§ 0.314(j) and 73.1835 of the Rules, the District Directors of the FCC's Enforcement Bureau Offices may require a broadcast station licensee to keep operating and maintenance records as necessary to resolve rule violations or deficient technical operation.